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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ERIC SCOTT,

Plaintiff(s),

v.

STATE OF NEVADA, et al.,

Defendant(s).

Case No. 2:17-cv-02569-GMN-NJK

REPORT AND RECOMMENDATION

Concurrently herewith, the Court is issuing an order granting Plaintiff's application to proceed *in forma pauperis* and ordering that he make installment payments. The Court herein screens Plaintiff's complaint pursuant to 28 U.S.C. § 1915. For the reasons discussed more fully below, the undersigned **RECOMMENDS** that this case be **DISMISSED** without prejudice

I. STANDARDS AND ANALYSIS

Upon granting an application to proceed *in forma pauperis*, courts additionally screen the complaint pursuant to § 1915(e). Federal courts are given the authority to dismiss a case if the action is legally "frivolous or malicious," fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). When a court dismisses a complaint under § 1915, the plaintiff should be given leave to amend the complaint with directions as to curing its deficiencies, unless it is clear from the face of the complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

1 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint for
2 failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is essentially a ruling
3 on a question of law. *See Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 723 (9th Cir. 2000). A properly
4 pled complaint must provide a short and plain statement of the claim showing that the pleader is entitled
5 to relief. Fed.R.Civ.P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Although Rule
6 8 does not require detailed factual allegations, it demands “more than labels and conclusions” or a
7 “formulaic recitation of the elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
8 (*citing Papasan v. Allain*, 478 U.S. 265, 286 (1986)). The court must accept as true all well-pled factual
9 allegations contained in the complaint, but the same requirement does not apply to legal conclusions. *Iqbal*,
10 556 U.S. at 679. Mere recitals of the elements of a cause of action, supported only by conclusory
11 allegations, do not suffice. *Id.* at 678. Secondly, where the claims in the complaint have not crossed the
12 line from conceivable to plausible, the complaint should be dismissed. *Twombly*, 550 U.S. at 570.
13 Allegations of a *pro se* complaint are held to less stringent standards than formal pleadings drafted by
14 lawyers. *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (finding that liberal construction of *pro*
15 *se* pleadings is required after *Twombly* and *Iqbal*).

16 A. Damages Claims

17 Plaintiff’s complaint alleges that his due process and other constitutional rights were denied him
18 during his criminal trial in state court. Docket No. 1-1. In broadly construing Plaintiff’s complaint, he
19 appears to allege the following: (1) that the government knowingly submitted perjured testimony, *see Pyle*
20 *v. Kansas*, 317 U.S. 213, 216 (1942); (2) that Plaintiff’s attorney provided ineffective assistance of counsel,
21 *see Strickland v. Washington*, 466 U.S. 668, 687 (1984); and (3) that the government withheld exculpatory
22 evidence, *see Brady v. Maryland*, 373 U.S. 83, 87 (1963). Plaintiff seeks \$10,000,000 in damages based
23 on these claims. *See* Docket No. 1-1 at 4.

24 These claims cannot proceed. Most significantly, the Supreme Court has held that a § 1983 action
25 cannot be used to collaterally attack a criminal conviction unless the conviction or sentence has been
26 reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to
27 make such a determination, or called into question by a federal court’s issuance of a writ of habeas corpus.
28 *See Heck v. Humphrey*, 512 U.S. 477, 484 (1994). In determining whether a § 1983 claim is barred by

1 *Heck*, the critical question is whether finding in the plaintiff's favor would necessarily imply the invalidity
2 of his conviction or sentence. *See, e.g., Szajer v. City of Los Angeles*, 632 F.3d 607, 611 (9th Cir. 2011).

3 In this case, Plaintiff has not shown that there exists a subsequent decision invalidating his
4 conviction and, to the contrary, Plaintiff affirmatively pleads that he remains in custody awaiting
5 sentencing. *See* Docket No. 1-1 at 3. Moreover, the claims alleged here would necessarily imply the
6 invalidity of any conviction or sentence, so they are barred. *See, e.g., Skinner v. Switzer*, 562 U.S. 521, 536
7 (2011) (explaining that *Brady* claims are *Heck*-barred); *Trimble v. City of Santa Rosa*, 49 F.3d 583, 585
8 (9th Cir. 1995) (holding that ineffective assistance of counsel claims are *Heck*-barred); *Dooley v. Olivas*,
9 2014 WL 3896185, at *3 (C.D. Cal. July 7, 2014) ("It is elementary to conclude that plaintiff's claims
10 related to defendant's alleged perjury and spoliation or falsification of evidence are *Heck*-barred"),
11 *adopted*, 2014 WL 3896201 (C.D. Cal. Aug. 8, 2014). Accordingly, these claims should be **DISMISSED**
12 without prejudice to their refiling in the event Plaintiff's conviction is reversed on direct appeal, expunged
13 by executive order, declared invalid by a state tribunal authorized to make such a determination, or called
14 into question by a federal court's issuance of a writ of habeas corpus.

15 B. Injunctive Relief Claims

16 In addition to seeking damages based on the above allegations, Plaintiff is also seeking injunctive
17 relief in the form of a retrial or dismissal. *See* Docket No. 1-1 a 4. It is somewhat unclear whether this is
18 an attempt by Plaintiff to seek habeas relief. *See* Docket No. 1 at 4 (checking and then crossing out that
19 type of action is habeas); *see also Trimble*, 49 F.3d at 586 ("To the extent that Trimble is contending that
20 he is entitled to be released from prison, his exclusive remedy is a writ of habeas corpus"). While it appears
21 any such habeas claim may be dismissible for failure to exhaust state remedies, the Ninth Circuit has noted
22 the most prudent course to avoid prejudicing Plaintiff's ability to seek habeas relief in the future is to
23 dismiss his § 1983 claims without prejudice to bringing a proper habeas petition. *Id.* Accordingly, these
24 claims should be **DISMISSED** without prejudice to their refiling through a habeas petition at an
25 appropriate juncture.

For the reasons discussed more fully above, the undersigned **RECOMMENDS** that this case be **DISMISSED** without prejudice.


Nancy J. Koppe
UNITED STATES MAGISTRATE JUDGE

Pursuant to Local Rule IB 3-2, any objection to this Report and Recommendation must be in writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has held that the courts of appeal may determine that an appeal has been waived due to the failure to file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1) failure to file objections within the specified time and (2) failure to properly address and brief the objectionable issues waives the right to appeal the District Court's order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).